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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,423	07/18/2003	Terry A. Miller	MILLERT-1	1748
7590		01/18/2007	EXAMINER	
Eric A. LaMorte		VALENTI, ANDREA M		
LaMorte & Associates, P.C.		ART UNIT		
P.O. Box 434		PAPER NUMBER		
Yardley, PA 19067		3643		
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE		DELIVERY MODE
3 MONTHS		01/18/2007		PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/621,423

Applicant(s)

MILLER ET AL.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-12 is/are allowed.
- 6) ☐ Claim(s) 1, 3, 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3643

DETAILED ACTION

In view of the Appeal Brief filed on 23 October 2006, PROSECUTION IS
HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the
following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply
under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed
by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and
appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth
in 37 CFR 41.20 have been increased since they were previously paid, then appellant
must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by
signing below:



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set
forth in section 102 of this title, if the differences between the subject matter sought to be patented and
the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3643

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,651,601 to La Montagne in view of U.S. Patent No. 4,887,385 to James et al and U.S. Patent No. 5,414,957 to Kenney.

Regarding Claim 1, La Montagne teaches a reusable floral arrangement assembly and method comprising a water (La Montagne Fig. 3) impermeable tray having a top surface, a bottom surface a continuous side wall (La Montagne see attached Fig. 5) that extends upwardly from the top surface; a connector (La Montagne Fig. 3 #2) disposed on the bottom surface of the tray; a support (La Montagne Fig. 2 #19 and 18) for holding the tray, wherein the support is selectively attachable to the connector on the bottom surface of the tray; a circular foam element that include a base level element (La Montagne Fig. 3 #10) wherein the base level element rests upon the top surface of the tray and; and a grid work (La Montagne Fig. 3 #14) extending over the foam structure, the grid work having an open bottom edge that selectively engages the continuous wall of the tray with a snap connection (La Montagne Col. 2 line 46-50), wherein the grid work of evenly distributed size areas envelopes the foam structure and holds the foam structure in a set position on the tray while the grid work demarcates both the vertical surfaces and the horizontal surfaces exposed on the foam structures into a plurality of sized areas (La Montagne Fig. 2 and 6 #14).

La Montagne is silent on a plurality of circular foam elements wherein the base level element and the at least one subsequent level element differ in diameter and are stacked atop each other forming a foam structure having a tiered configuration with

Art Unit: 3643

exposed vertical surfaces and horizontal surfaces. However, James '385 teaches that it is old and notoriously well-known to place multiple levels of foam on a tray surface and that the foams layers have different sizes (James '385 Fig.1 and 5 #11, 10, 52, 50).

James '385 teaches that it is general knowledge to have foams of different sizes and shapes in combination (James '385 Col. 1 line 21-23 and 29-47). It would have been obvious to one of ordinary skill in the art to further modify the teachings of La Montagne with the teachings of James '385 at the time of the invention since the modification is merely a duplication of a known element performing the same intended for a multiple effect to increase the flower insertion area for a larger arrangement or a more elaborate arrangement as taught by James '385. James teaches that the foams can take on a variety of shapes and that the different size foams can be staked to create multiple levels of exposed vertical and horizontal surfaces. It would have been obvious to one of ordinary skill in the art to modify the teachings of LaMontagne with staked circular foams of differing diameters since the modification is merely a change in size/shape for a desired aesthetic effect.

LaMontagne teaches a grid work enveloping the foam structure, but is silent on a grid work that envelopes a foam structure of varying shapes and sizes to demarcate the vertical and horizontal surfaces of each level in equally sized areas. However, Kenney teaches a foam structure on a tray with grid work enveloping a foam structure of varying shapes and sizes to demarcate the vertical and horizontal surface of each level (Kenney Fig. 3 #13, 15, 18, 14, 16). It would have been obvious to one of ordinary skill in the art to further modify the teachings of LaMontagne with the teachings of Kenney at the time

Art Unit: 3643

of the invention as a guide for the floral designer depending on the desired floral design arrangement.

Regarding Claim 7, La Montagne as modified teaches the support is selected from the group consisting of bouquet handles, centerpiece stands (La Montagne Fig. 3 #19 and 18) and ground spikes.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,651,601 to La Montagne in view of U.S. Patent No. 4,887,385 to James et al and U.S. Patent No. 5,414,957 to Kenney as applied to claim 1 above, and further in view of French Patent FR 2620591 to Roder.

Regarding Claim 3 and 9, La Montagne as modified is silent on the tray includes at least one prong that extends up into the foam structure, thereby helping retain the plurality of disposable foam elements in the set position on the tray. However, Roder teaches a floral display tray with at least one prong (Roder Fig. 1 #4). It would have been obvious to one of ordinary skill in the art to further modify the teachings of La Montagne with the teachings of Roder at the time of the invention for the known advantage of securing the foam in place for ease of assembly.

Allowable Subject Matter

Claims 8-12 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Art Unit: 3643

Cited references English translation, French Patent 2620591, Support for Flowers or Other Decorative Objects that can be Inserted in the Same, Publication Date 03-1989, Name Manfred Roder, Classification A01G5/04, 9 pages including title page; United Kingdom Patent GB 1544630; U.S. Patent No. 2,765,585; U.S. Patent No. 2,482,278; U.S. Patent No. 4,887,385; U.S. Patent No. 336,697; U.S. Patent Pub. No. US 2003/0136049; French Patent FR 2620591A1; U.S. Patent No. 6,007,882; U.S. Patent No. 5,450,691; U.S. Patent No. 3,183,624; U.S. Patent No. 4,566,221; U.S. Patent No. 3,962,825; U.S. Patent No. 3,651,601; U.S. Patent No. 6,289,631; U.S. Patent No. 4,204,365; U.S. Patent No. 5,070,644; U.S. Patent No. 6,393,76; U.S. Patent No. 2,891,354; U.S. Patent No. 6,688,040; U.S. Patent No. 5,414,957 teach tiered layer foam elements that receive flower stems that rest and that rests in a tray with a continuous wall.

The prior art of record all fails to show, and fails to make obvious, either alone and/or in combination a plurality of foam elements that are generally cog shaped having square cog projections that symmetrically protrude in a radial pattern and the base level and at least on subsequent level differ in size and are stacked atop each other forming a tiered configuration resting on a tray that has a continuous wall to retain a volume of water. Applicant gives criticality to the cog shape in the specification (specification page 12-13, because of the shape a grid is not required and enables the floral designer to place flowers at a variety of different angles on each level and at an even spacing).

Response to Arguments

Applicant's arguments with respect to claims 1, 3 and 7 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has merely claimed that the grid work demarcates the vertical and horizontal surfaces. Examiner suggests that applicant use the language "conforms to" instead of demarcate to better define the structure of the grid work in relation to the foam elements.

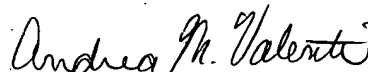
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Andrea M. Valenti
Primary Examiner
Art Unit 3643

10 January 2007